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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,115	06/14/2002	Henricus Wilhelmus Theodorus Janssen	EF377397961US	1559
7590	08/03/2005		EXAMINER	
Baker Botts 30 Rockefeller Plaza New York, NY 10112			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 08/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/018,115	JANSSEN, HENRICUS WILHELMUS THEODORUS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 06 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-7,9-12,16-18 and 21-31 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7,9-12,16-18 and 21-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 7, 9, 12, 16, 17, and 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over United Kingdom Patent GB 2177889 to Nacey in view of U.S. Patent No. 3,316,675 to Cartwright.

Regarding Claims 1, 6, 9, 12, and 16, Nacey teaches a method of manufacturing a plant support manufactured having an at least two partially open walls (Nacey #2 and 3), the box-shaped element (Nacey Fig. 2 #2, 3, and 1 and page 1 lines 56-57) being at least partially covered with a preferably covering material (Nacey page 1 line 5-8 "grow bag" Fig. 3 #15), the covering material being provided in such a manner that it covers the partially open walls at least partially, such that the walls become soil-proof; Nacey teaches a substantially vertically extending guide element mounted on the box-shaped element, wherein the guide element is positioned midway between the two walls (Nacey page 1 line 45 and Fig. 1 and 2 #7) and during use functioning as a guide for a plant or plants growing in the box-shaped element; and the box-shaped element can be picked up and moved (Nacey page 1 line 41-42); the box-shaped element is placed on the ground.

Nacey teaches the covering to contain the soil and the plant, but does not explicitly teach that the cover is a substantially biodegradable covering material while roots of a plant, growing in the pot during use, can grow at least partially through the covering (i.e. including the longitudinal wall, since the covering material covers the longitudinal wall) material and the wall to the outside of the plant support, characterized in that as covering material a material is manufactured from biodegradable material. However, Cartwright teaches a wire plant container with a covering/grow bag folded in place (Cartwright #2 and Col. 3 line 9) that contains the plant and soil, is biodegradable, and is capable of allowing root penetration (Cartwright Col.2 line 40 "burlap"; applicant has merely claimed that the roots are capable of growing through, but not positively that they grow through; teaching reference U.S. Patent No. 5,892,192 to Gatliff Col. 8 line 37-43 used here merely as an example of knowledge available to one of ordinary skill in the art that roots can penetrate burlap and burlap is a natural material that will inherently biodegrade). It would have been obvious to one of ordinary skill in the art to modify the teachings of Nacey with the teachings of Cartwright at the time of the invention since the modification is merely the selection of a known material for intended use [*Leshin* 125 USPQ 416], i.e. an engineering design choice of a selection of a particular material cover material for the advantage of moisture preservation as taught by Cartwright (Cartwright Col. 1 line 17-18).

Regarding Claim 2, Nacey as modified teaches the box-shaped element is at least substantially manufactured from material having a mesh-shaped structure (Nacey Fig. 2 and page 1 line 27).

Regarding Claims 3 and 26, Nacey as modified discloses the box-shaped element is substantially manufactured from wire material (Nacey page 1 line 62-63).

Regarding Claim 7, Nacey as modified is silent on the covering material is woven into the wall of the box-shaped element. However, applicant does not provide any criticality for the woven nature of the covering material in the specification. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Nacey at the time of the invention since the modification is merely an engineering/manufacturing design choice to enhance the aesthetical appeal of the container by creating a weaved pattern or as a means to keep the liner in place to prevent any undesirable shifting during transport and does not present a patentably distinct limitation.

Regarding Claim 17, Nacey as modified teaches that the covering material during use inherently at least temporarily prevents roots growth to the outside of the element (Nacey #15 and Cartwright #2 are barriers that inherently temporarily prevent growth since they are paths of some resistance).

Regarding Claims 21 and 27, Nacey as modified teaches the mesh shaped guide element and the box-shaped element are manufactured in one piece (Nacey page 1 line 52-54).

Regarding Claim 22, Nacey as modified teaches the plant support is demountable (Nacey page 1 line 58-60).

Regarding Claim 23, Nacey as modified teaches the guide element is detachably mountable adjacent the bottom of the box-shaped element (Nacey #12 and 11).

Regarding Claims 24, 28, and 29, Nacey as modified teaches a desired guide height (Nacey page 1 line 117-118), but is silent on a plurality of box-shaped elements and moving the box-shaped elements into a juxtaposed end-to-end position to form a substantially closed elongated hedge. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Nacey at the time of the invention since the modification is merely the duplication of a known element for a multiple effect performing the same intended function [*in re Harza*, 274 F.2d 669, 671, 124 USPQ 378, 380 (CCPA 1960)] modified to grow a plurality of plants for a large scale operation. Furthermore, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Nacey at the time of the invention with the end to end configuration merely for the advantage for an efficient use of storage space, based on particular space constraints, or for a particular aesthetic design similar to topiary designs.

Regarding Claim 25, Nacey as modified inherently teaches a plurality of plants (Nacey Fig. 3 #17).

Regarding Claims 30 and 31, Nacey as modified does not explicitly teach the step of clipping plants above the upper edge of the guide element or plants don't grow above the guide element. However, these steps are available knowledge to one of ordinary skill in the art. It is old and notoriously well-known in plant husbandry to shape plants in various configurations, this art is known as topiary or plant sculpturing. Also, plants (e.g. grape vines) are groomed at the top to encourage the plant to grow full and bushy. The desired height is a subjective choice, some people like their hedges higher

then others for more privacy or for an aesthetic design (merely cited as an example of this known knowledge U.S. Patent No. 679,976 and U.S. Patent No. 502,058). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Nacey at the time of the invention for a desire aesthetic appearance and for healthy plant development.

The ability of the plant to fall back against the guide is merely a characteristic of the particular plant variety selected and does not pertain to the structure of the device. One of ordinary skill the art would be motivated to have this particular effect for the advantage of a topiary design or a full/bushy appearance. Due to the nature of gravity and the selected plant variety, if not vertically support the plant exceeds the support is capable of falling down and resting on the guide at some point in time.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over United Kingdom Patent GB 2177889 to Nacey in view of U.S. Patent No. 3,316,675 to Cartwright as applied to claim 9 above, and further in view of Netherlands Patent NL 8700470 to Dekker

Regarding Claims 10 and 11, Nacey as modified teaches moving the box-shaped element to different positions, but is silent on the box-shaped element is positioned in the ground, that it is dug into the ground such that the roots of each plant grow outside of through the plant support into the ground. However, Dekket teaches placing a wire mesh plant support in the ground (Dekker Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Nacey with the teachings of

Dekker at the time of the invention to efficiently incorporated into a final planting location as taught by Dekker for continued support for the life of the plant.

Claims 4, 5, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over United Kingdom Patent GB 2177889 to Nacey in view of U.S. Patent No. 3,316,675 to Cartwright as applied to claim 1 above, and further in view of U.S. Patent No. 3,958,365 to Proctor.

Regarding Claims 4, 5 and 18, Nacey as modified teaches a covering of natural fibers (i.e. burlap), but is silent on the covering material is manufactured from at least natural fibers (i.e. coco fibers) and binding agent (i.e. latex). However, Proctor teaches a wire basket liner (Proctor Col. 2 line 64-65) made of coco fiber and latex (Proctor Col. 2 line 40 and 33). It would have been obvious to one of ordinary skill in the art to further modify the liner teachings of Nacey as modified by Cartwright with the natural fiber teachings of Proctor for the efficient means of conserving moisture in the soil in which plants grow (Proctor Col. 1 line 29-30) since the modification is merely an alternate selection of a known biodegradable material for intended use [*Leshin* 125 USPQ 416] that contains soil and permits the growth of roots through the liner selected for the advantage of moisture conservation as taught by Proctor.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7,9-12,16-18 and 21-31 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent Des. 369,121 to Morin and U.S. Patent No. 5,829,192 to Gatliff

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

01 August 2005